

In re Appln. of: Udo GROSS et al
Appln. No.: 10/018,398
Attorney docket: 754-X01-002

Group Art Unit: 1614

REMARKS

The prosecution of this application seems to have devolved into a semantic discussion. Claims 16 to 29 have been rejected in the current Office Action under 35 USC 112 on the ground that "treating an eye" and "caring for an eye" require treatment or caring of a specific disease that was known to applicant and disclosed in the specification, and such appears not to be the case. It is certainly true that no specific disease is disclosed in the application, but in this regard the Examiner's position is untenable and illogical and, even more important, is irrelevant to the invention presented in this application.

The Examiner is giving the words "treat" and "care" special meanings and not their customary and usual meanings. Applicant is only interested that these words be given their usual and customary meanings. In this regard, reference is taken to Merriam-Webster's Collegiate Dictionary. The word, "treat", as appears on page 1258 of this dictionary, means

"4. to care for or deal with medically or surgically (~ a disease) 5. to act upon with some agent esp. to improve or alter (~ a metal with acid)"

To treat a disease is only an example of how the word is used. As for other medical or surgical uses, kindly consider

- (a) to treat a broken arm by placing in a splint
- (b) to treat a cut by applying a bandage
- (c) to treat an abrasion by applying a soothing ointment
- (d) to treat an insect bite by applying alcohol to the bite
- (e) and so forth *ad infinitum*

Treat does not necessitate that the treatment be **only** for a disease. That is not common usage. The tilde (~) in the definition is only an illustration, not a restriction on meaning, see page 18a of the dictionary, right column as marked.

In re Appln. of: Udo GROSS et al
Appln. No.: 10/018,398
Attorney docket: 754-X01-002

Group Art Unit: 1614

In definition 5, the meaning is to act upon with some agent to improve or alter. That is exactly what is being done according to the claims 16 to 29. The ophthalmologic treating agent is being applied to the eye to alter or improve. The functions served are expressed in detail in claims 17 to 19 and 22 and again in claims 24 to 26 and 29.

In a similar fashion, the word "care" is not restricted to mean that to care **must be** for a disease. Note that the definition of "treat" uses the word "care" in its definition 4. According to the dictionary, page 173, "care" in definition 2, says "to give care (~ for the sick)". Again, that is only an illustration of the usage. The common usage is much broader in meaning and for examples consider

- (a) to care for a broken arm
- (b) to care for a cut
- (c) to care for an abrasion
- (d) to care for an insect bite
- (e) and so forth *ad infinitum*

Without belaboring the point, the rejection of claims 16 to 29 must be withdrawn as not well founded in fact. The documents to support the above clarification of the semantic aspects of the case are attached to this response, and include the frontispiece of the dictionary and the pages referred to above in explaining the common usage for the words "treat" and "care". Applicant's attorney is prepared and desirous of discussing this matter in an interview with the Examiner in the unlikely event the application is not allowed.

In light of the foregoing remarks, this application should be in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned. As a matter of fact, applicant's attorney called the

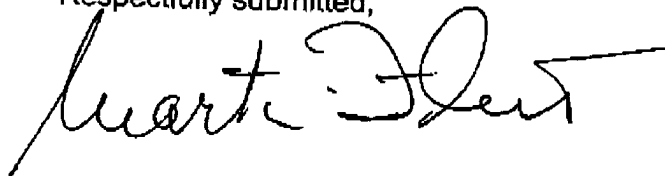
In re Appln. of: Udo GROSS et al
Appln. No.: 10/018,398
Attorney docket: 754-X01-002

Group Art Unit: 1614

Examiner in charge of this case on January 27, 2005 and left a voice mail requesting an interview and a return phone call to schedule an interview. No return phone call was received.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time, time sufficient, to effect a timely response, and shortages in this or other fees, be charged, or any overpayment in fees be credited, to the Deposit Account of the undersigned, Account No. 500601 (Docket no. 754-X01-002)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin Fleit", with a long horizontal stroke extending to the right.

Martin Fleit, Reg. #16,900

Martin Fleit
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO
601 Brickell Key Drive Suite 404
Miami, Florida 33131
Tel: 305-416-4490; Fax: 305-416-4489
e-mail: MFleit@Focusonip.com